

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
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W18a



Staff: C. Lester  
Staff report prepared: 8/21/2003  
Hearing date: 9/10/2003  
Hearing item number: W18a

## COASTAL DEVELOPMENT PERMIT AMENDMENT

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**Amendment number** .....A-3-SCO-00-033-A1, Hinman-Skees Residence

**Applicants** .....Brian Hinman & Suzanne Skees

**Project location** .....Approximately  $\frac{3}{4}$  of a mile inland of State Highway One at the Santa Cruz/San Mateo County border inland from Año Nuevo State Reserve, North Santa Cruz County (APN 054-061-16).

**Previously Approved Project** ....Construct a home, detached accessory structure, swimming pool, courtyard, driveway and access road (CDP A-3-SCO-00-033; see Attachment 1).

**Proposed Amendment** .....Replace the previously approved conditions of approval of with substitute conditions of approval developed through litigation settlement negotiations following an adverse trial court ruling (see Section II and Attachment 2).

**File documents**.....Santa Cruz County Certified Local Coastal Program (LCP); Santa Cruz County Coastal Development Permit Application File 98-0426.

**Staff recommendation** .....Approval

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**Summary:** Staff recommends that the Commission approve the amendment to coastal development permit (CDP) A-3-SCO-00-033. The result will be that the previously approved conditions of approval (see pages 6 through 16 of Attachment 1) will be replaced by the proposed revised conditions of approval (see Section II below for the new conditions; see also Attachment 2 for cross-through and underline version of the changes due to the amendment). The revised conditions were negotiated following a trial court decision holding that several of the Commission's original permit conditions were not supported by substantial evidence.



## Staff Report Contents

page

I. Staff Recommendation.....	2
II. Conditions of Approval .....	2
A. Standard Conditions.....	2
B. Special Conditions .....	3
III. Findings and Declarations .....	12
IV. Attachments	
Attachment 1: Commission-adopted staff report for CDP A-3-SCO-00-033	
Attachment 2: Cross-through and underline version of the conditions of approval that shows the changes due to the amendment	

### I. Staff Recommendation

Staff recommends that the Commission, after public hearing, **approve** the proposed coastal development permit amendment.

**Motion.** I move that the Commission approve the proposed amendment to Coastal Development Permit Number A-3-SCO-00-033 pursuant to the staff recommendation.

**Staff Recommendation of Approval.** Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve a Permit Amendment.** The Commission hereby approves the coastal development permit amendment on the ground that the development, as amended and subject to conditions, and consistent with the trial court's ruling on August 20, 2002 on the petition for writ of mandate in *Hinman v. California Coastal Commission* (San Francisco Superior Court Case No. 318867), will be in conformity with the certified Santa Cruz County Local Coastal Program.

### II. Conditions of Approval<sup>1</sup>

#### A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

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<sup>1</sup> Note that all references to exhibits in these conditions are to the exhibits of the original Commission approval for CDP A-3-SCO-00-033; see Attachment 1.

2. **Expiration.** The permit will expire two years from the date on which the Commission adopts these conditions if development has not commenced within such two year period. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## B. Special Conditions

1. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be substantially in conformance with the plans submitted to the Commission (titled *Año Nuevo House* by Kirk E. Petersen and Associates Architects last dated revised December 28, 1999; dated received in the Commission's Central Coast District Office January 14, 2000 – hereafter referred to as the "Original Project Plans") with respect to the overall building footprint, grades, intensity of development, utilities and mitigation measures. At the Permittee's option, the Revised Project Plans may show changes from the architectural style and overall massing of the project identified in the Original Project Plans as specified in, and consistent with, subparagraph (n). The Revised Project Plans also shall show the following changes to the project:
  - (a) **Allowed Area of Site Disturbance.** The area of site disturbance shall be limited to a maximum of 2 acres (i.e., 87,120 square feet) for the residential compound footprint and to a maximum of 18,000 square feet for the new driveway over the jeep trail. Maintenance of or improvements to the access road pursuant to subparagraphs (g) and (h) shall be excluded from the calculation of the total allowed area of site disturbance. The residential compound footprint is that area shown on the plans within which all development and structures (including but not limited to the residence, all impermeable pathways, courtyards, garages, swimming pools, retaining walls, lawn and ornamental landscape areas, grading, septic tanks, septic lines, etc.) are shown. The revised project plans shall clearly identify the overall area of site disturbance, the residential compound footprint, and the driveway (with closed polygons in site plan view) and shall include square footage calculations showing these areas to be within the allowed site disturbance limits.
  - (b) **Development Prohibited Outside of Site Disturbance Area.** Development is prohibited in the areas outside of the designated residential compound footprint and driveway, except for (1) road improvements; (2) non-site disturbance area habitat enhancement; and (3) tree planting for

screening purposes; all subject to the requirements stated in these conditions below.

- (c) **Grading.** All graded areas, including but not limited to the septic line area, shall be contoured to mimic the natural topography and revegetated with native grasses appropriate to the Año Nuevo region.
- (d) **Structural Height.** The height of the residential structure shall not exceed 35 feet from existing natural grade, and may be any height under 35 feet at the Permittee's discretion. The Revised Project Plans shall clearly identify the height reduction (e.g., by showing a dashed line in all elevation views that identifies the originally proposed structural height).
- (e) **Building Materials.** All exterior treatment shall be wood in shades of green and brown designed to match the mottled forest backdrop at this location. The roof shall be of earth-tone colors designed to match the mottled forest backdrop at this location. All upper story windows shall use low reflective glazing.
- (f) **Lighting.** There shall be no exterior night lighting, other than the minimum lighting necessary for pedestrian and vehicular safety purposes. In no case shall such lighting for safety purposes be located above the first floor of the residential structure. All lighting shall be directed away from environmentally sensitive habitat areas. All interior lighting within the residence shall be directed away from windows which are visible from environmentally sensitive habitat areas. All lighting shall be downward directed and designed so that it does not produce any light or glares off-site.
- (g) **Road Improvements (General).** The plans shall not depict any paving of the driveway or the access road (extending from Highway One to the driveway location) or any improvements to the access road (including enlargement and/or other modification pursuant to this subparagraph and subparagraph (h)). Any access road improvements shall be located within the existing roadway prism (i.e., no roadbed expansion is allowed) except for the minimum sized turn-outs necessary to accommodate fire protection equipment as shown on the submitted plans. Any access road improvements shall incorporate adequate measures to capture, direct, and treat road runoff to avoid sediment and pollutant loading.
- (h) **Road Improvements (Near Pond).** The access road area adjacent to the pond shall be modified to provide for sensitive habitat connectivity (i.e., San Francisco garter snake and California red-legged frog migration between the pond and the riparian corridor to the southwest) and flood protection (see also Exhibit G-1) as follows:
  - (1) Maintenance of existing culverts. The existing two metal culverts shall be maintained so as to provide a habitat corridor for San Francisco garter snake and California red-legged frog. The plastic pipe attached to the culverts on the opposite side of the road as the pond (i.e., to the south) shall be removed to allow through passage for frogs and snakes.
  - (2) Wing walls. Wing walls are allowed if necessary on the existing culverts, provided such walls are located within the existing roadway prism.

- (3) **Habitat barrier wall.** A barrier wall, which may be incorporated into the wing walls as feasible, shall be installed along both sides of the access road extending 75 feet to the west and 75 feet to the east of the existing culverts. The barrier wall shall extend three feet above grade and extend one foot below grade, and shall be faced with a smooth exterior treatment (such as aluminum or galvanized metal sheeting).
  - (4) **Replace v-ditches.** That portion of the concrete v-ditches located along the pond side of the road within the 158 foot section of road where the culverts are and the barrier wall is to be installed (i.e., that portion of the ditches extending 75 feet to the west and 75 feet to the east of the culverts) shall be removed and replaced by a series of vegetated check dams designed to slow the velocity of the runoff; to filter and settle sediment and debris; and to treat road runoff to avoid pollutant loading. The check dams shall be located every 15 linear feet on average, and may be constructed with rock and/or wooden materials; all check dam areas shall be vegetated with appropriate native hydrophytic species capable of either filtering and/or biologically treating runoff (e.g., rushes).
  - (5) **Restoration.** The areas on either side of the road that are disturbed by access road improvements near the pond shall be restored within the parameters of the Habitat Enhancement Plan (Special Condition 3).
- (i) **Driveway.** The driveway from the access road to the residence shall be placed as far away from the pond as possible using the existing informal jeep trail adjacent to the southern property line to avoid the main pond habitat area as much as is feasible (see Exhibit G-1). The driveway shall not be paved. The driveway shall be minimized in length and width, and in no case shall the driveway be wider than 12 feet, except for the minimum sized turn-outs necessary to accommodate fire protection equipment as shown on the submitted plans. All remaining jeep trail areas shall be scarified and revegetated with native grasses appropriate to the Año Nuevo region.
  - (j) **Tree Screen.** The 1,200 linear foot Monterey cypress row along the western property line shall be planted as an uneven stand (a minimum of two rows, 120 individual trees) using 15 gallon container size specimens for the first row nearest the existing road, and a mix of 5 gallon and 15 gallon container size specimens for the second row furthest from the existing road (to the east of the first row of trees). The Monterey cypress row shall be planted as close to the existing road as possible while not threatening tree viability. The 22 enhancement trees in the general vicinity of the residence (a mix of Monterey cypress, Coast live oak, and coast redwood) shall be a mix of 24 inch box, 15 gallon, 5 gallon and 2 gallon container size specimens.
  - (k) **Site Runoff.** All site runoff shall be captured and filtered to remove typical runoff pollutants. Runoff from all surfaces subject to vehicular traffic shall be filtered through an engineered filtration system specifically designed to remove vehicular contaminants. All filtered runoff that is suitable for groundwater recharge, irrigation, and/or pond restoration purposes shall be directed to groundwater basins, irrigation systems, and/or ponds in such a manner as to avoid erosion and/or sedimentation.

- (l) **Defensible Space.** The Residential Compound Footprint shall be configured to allow for a California Department of Forestry “defensible space” that does not require removal of any living Monterey pine. The defensible space and all vegetation proposed within the defensible space shall be clearly identified on the plans. The plans shall also identify all parameters for maintaining the defensible space, including but not limited to: identification of what types of vegetation must be removed; what types of vegetation can remain; and the specific parameters for any tree limb removal (e.g., when such limbs shall be removed, at what limb height is removal unnecessary, etc.).
- (m) **Non-invasive vegetation.** All vegetation to be planted shall be non-invasive species.
- (n) **Architectural Style and Overall Massing.** The Gothic Revival exterior architectural style and the project massing specified in the Original Project Plans may be modified to allow for: (1) a smaller overall mass and/or gross square footage; (2) a different architectural style and design; and (3) a modified exterior architectural treatment, provided such exterior treatment and architectural embellishment is indicative of north coast Santa Cruz County residences on agricultural parcels (i.e., the massing is small scale and subordinate to the landscape; the design is broken up with areas of indent, varied rooflines, offsets, and projections that provide shadow patterns; there are smaller second stories set back from the first; etc.). Such modifications must occur within the structural profile of development shown on the submitted plans, as adjusted by this condition for a maximum height of 35 feet from existing grade. The Revised Project Plans must clearly demonstrate that such modifications are within the profile so established (e.g., by showing a dashed line in all elevation views that identifies the originally proposed structural development and the 35-foot height requirement).
- (o) **Corrals.** The Revised Plans may show a horse corral and associated minor structures (e.g., a one-story horse shelter, feed storage shed, etc.), provided such corral and any associated structures are located entirely within the residential compound footprint, as provided in Special Condition 1(a).

This condition in its entirety shall be included as plan notes on the Revised Project Plans.

The Revised Project Plans shall be submitted with evidence of review and approval (or evidence that none is necessary) from the appropriate official(s) from: (1) Santa Cruz County; (2) United States Fish and Wildlife Service; (3) California Department of Fish and Game; and (4) California Department of Forestry.

The Permittee shall undertake development in accordance with the approved Revised Project Plans. Any proposed changes to the approved Revised Project Plans shall be reported to the Executive Director. No changes to the approved Revised Project Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

2. **Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Construction Plan to the Executive Director for review and approval. The

Construction Plan shall, at a minimum, provide for the following:

- (a) **Construction Zone.** The perimeter of the area subject to construction activity shall be minimized to that absolutely necessary to construct the access road improvements adjacent to the pond (as referred to in Special Condition 1(h)), the driveway, and the residential compound, and shall be delineated by construction fencing adequate to repel San Francisco garter snake and California red-legged frog. The location of all such fencing must be clearly identified on the construction plan and the area enclosed designated as the construction zone. The construction zone should form a closed polygon using temporary gate structure(s) likewise designed to repel frogs and snakes (with gates on both the access road and its intersection with the driveway, as necessary to allow through road access); at a minimum, the gate at the entrance to the driveway shall be secured at the end of each working day. Temporary culverts, a minimum of 12 inches in diameter shall be installed every 50 feet across the access road and driveway within the construction zone to provide temporary through habitat corridor access through the construction zone during construction. The construction zone fencing and culverts shall be maintained in good working order for the duration of the construction. All construction methods (including staging and stockpiling areas) expected to be used during construction shall be identified. To the extent feasible, previously disturbed off-site areas shall be used for storage and staging of equipment and materials. No construction activities shall take place, and no equipment or material storage shall occur, outside of the established construction zone other than tree planting for screening purposes where measures are taken to absolutely minimize the amount of equipment and overall activity associated with tree planting. CONSTRUCTION SHALL NOT COMMENCE UNTIL ALL CONSTRUCTION ZONE FENCING AND TEMPORARY CULVERTS ARE COMPLETELY INSTALLED AND OPERATIONAL.
- (b) **Biological Monitor.** A qualified biological monitor (i.e., a biologist experienced with, at a minimum, San Francisco garter snake and California red-legged frog, and possessing all appropriate permits and/or permissions to handle these listed species) shall be present at the site as follows:
- (1) Prior to installation of construction zone fencing and culverts. The monitor shall survey the construction zone for the presence of San Francisco garter snake and California red-legged frog. Any individual frogs or snakes found during the field survey shall be relocated to protected areas outside of the construction zone. The construction zone must be surveyed within 3 days of subsequent fencing and culvert installation.
  - (2) During installation of construction zone fencing and culverts. The monitor shall be present and shall oversee the installation of all construction zone fencing and temporary habitat corridor culverts.
  - (3) Immediately following installation of construction zone fencing and culverts. The monitor shall re-survey the enclosed construction zone for the presence of San Francisco garter snake and California red-legged frog. Any individual frogs or snakes found during the re-survey shall be relocated to protected areas outside of the construction zone. CONSTRUCTION

SHALL NOT COMMENCE UNTIL THE BIOLOGICAL MONITOR HAS DEEMED THE ENCLOSED CONSTRUCTION ZONE DEVOID OF SAN FRANCISCO GARTER SNAKE AND CALIFORNIA RED-LEGGED FROG.

- (4) During all access road construction near pond. The monitor shall be present at all times during construction of road improvements along the access road near the pond. Construction on the road near the pond shall be prohibited if the biological monitor is not present.
- (5) During all tree planting activities outside of the construction zone. The monitor shall be present at all times during all tree planting activities (including site preparation, installation of individual trees, and any subsequent associated activities). Tree planting activities shall be prohibited if the biological monitor is not present.
- (6) During all construction. The monitor shall make weekly site visits during construction to verify that all construction zone fencing and culverts are in place and functioning as intended. Any repair or maintenance to the fencing or culverts deemed necessary by the monitor shall be completed under the monitor's supervision. Such maintenance activities include adequate mowing of vegetation at the fence line to ensure that vegetation "ladders" are not allowed to establish (ladders that would allow protected species to access the construction zone over the fencing).
- (7) Upon completion of construction. When all construction activities are completed and occupancy to the residence is allowed, the construction zone fencing and temporary culverts shall be removed under the supervision of the monitor.

The biological monitor shall have the authority to halt all or some construction activities and/or modify all or some construction methods as necessary to protect habitat and individual sensitive species. The biological monitor shall complete monitoring reports for each day that the monitor is present that, at a minimum, indicate the date and time of work, weather conditions, the monitoring biologist's name, project activity/progress, any listed species observed, any measures taken to repair and/or maintain fencing and/or culverts, and any construction modifications required to protect habitat. These reports shall be compiled and submitted to the Executive Director upon cessation of construction as part of a construction monitoring report.

- (c) **Winter Season Grading Prohibited.** All grading shall be limited to the dry season (i.e., from April 15th to October 15th) of the year.
- (d) **Work Schedule.** Timing for all outdoor construction activities shall be Monday through Saturday, 7:00 a.m. to 7:00 p.m. Any construction that occurs after sunset shall be limited to interior (of structures) work and shall be subject to the same lighting parameters as established for the completed residence by Special Condition 1(f).
- (e) **Erosion Control Procedures.** The Construction Plan shall clearly identify all best management practices to be implemented during construction and their location. Such plans shall contain provisions for specifically identifying and protecting all natural drainage swales (with sand bag



barriers, filter fabric fences, straw bale filters, etc.) to prevent construction-related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into the onsite wetland/riparian system and/or ultimately into the Pacific Ocean. Silt fences, or equivalent apparatus, shall be installed at the perimeter of all construction areas. At a minimum, such plans shall also include provisions for stockpiling and covering of graded materials, temporary stormwater detention facilities, revegetation as necessary, restricting grading and earthmoving during the rainy weather.

The Erosion Control Procedures shall indicate that: (1) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all de-watering operations shall include filtration mechanisms; (2) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage; (3) concrete rinsates shall be collected and they shall not be allowed to enter any natural drainage areas; (4) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather); and (5) all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day.

All Construction Plan requirements noted in this condition shall be shown as notes on the job copy of the Approved Revised Project Plans.

The Construction Plan shall be submitted with evidence of review and approval (or evidence that none is necessary) from the appropriate official(s) from: (1) Santa Cruz County; (2) United States Fish and Wildlife Service; (3) California Department of Fish and Game; and (4) California Department of Forestry.

The Permittee shall undertake development in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

- 3. Habitat (Pond Only) Treatment and Enhancement Plan.** PRIOR TO OCCUPANCY OF THE RESIDENCE, the Permittee shall implement a habitat (pond only) enhancement plan prepared by a qualified biological consultant.
- 4. Habitat, Scenic, and Rural North Coast Character Protection.**
  - (a) Special Condition 1 of Coastal Development Permit Number A-3-SCO-00-033 establishes a site disturbance area within which development is to be contained. No development, as defined in

Section 30106 of the Coastal Act or Section 13.10.700-D of the certified Santa Cruz County Local Coastal Program, shall occur outside of the designated site disturbance area except for: (1) road improvements allowed pursuant to Coastal Development Permit Number A-3-SCO-00-033, including subsequent repair and maintenance to maintain the road in its approved state as shown on the approved plans; (2) habitat enhancement and restoration activities undertaken pursuant to an approved plan; and (3) tree planting for screening purposes allowed pursuant to Coastal Development Permit Number A-3-SCO-00-033 as shown on the approved plans.

- (b) Helicopter use, including but not limited to landing or parking of helicopters on the property, associated with any development authorized by Coastal Development Permit A-3-SCO-00-033 is prohibited, except for emergency purposes.
- (c) No trees of any size that are located on the subject property (current Assessor Parcel Number 054-061-16) between the residential compound footprint (identified through Special Condition 1 of Coastal Development Permit Number A-3-SCO-00-033) and Highway One shall be removed from the subject property unless the Executive Director has determined that said tree(s): (1) present a significant hazard to life, health, or property; or (2) are being removed as part of an approved habitat enhancement project. Any such tree(s) removed, and/or any trees located between the residential compound footprint and Highway One that die and fall over of their own accord, shall be replaced with two trees of the same species (or a native species expected to approximate the height and bulk of the tree(s) removed in the case of non-native tree replacement) in the same general vicinity as the previous tree. Any replacement trees shall be a minimum of 5 gallon container size specimens. Any required permits shall be obtained prior to any tree removal and/or tree planting episode(s).
- (d) The subject property includes a portion of the native Año Nuevo Monterey pine forest within which development and utilization of a prescribed burning program, or other means to mimic the effects of natural fires, is allowed and may be pursued.
- (e) If any portion of any structures located within the residential compound footprint identified through Special Condition 1 of Coastal Development Permit Number A-3-SCO-00-033 becomes visible to the unaided naked eye in the future from any public viewing location(s) within Año Nuevo State Reserve and/or from Highway One, the visible portion(s) shall be immediately screened with vegetation.
- (f) Agricultural plantings, use and/or activities shall be prohibited outside of the site disturbance area except for limited horse grazing (no more than 2 grazing horses at any one time) outside of the wetland and riparian area (as mapped in Exhibit P-22) provided that a water source located within the site disturbance area is provided for the grazing horses.
- (g) Only native plant species appropriate to the Año Nuevo region shall be planted outside of the site disturbance area. Planting of invasive plant species shall be prohibited on the entire parcel.
- (h) Domestic animals are prohibited on the subject property, except as follows: (1) indoor cats only are allowed; (2) dogs are permitted without restriction within the site disturbance area, but must

be on leashes outside the site disturbance area; (3) up to two (2) horses are permitted without restriction within the site disturbance area, but may graze outside the site disturbance area only as set forth in subsection (f) above and may be ridden outside the site disturbance area on existing trails, and the access road and driveway only.

- (i) The portion of the access road (i.e., the road that extends from Highway One to the southern property line of the subject property, and including any associated approved turnouts) that is located on the subject property shall not be paved. Permittee shall not cause and shall not participate in the paving of any portion of the access road not located on the subject property.

By acceptance of this permit, the Permittee acknowledges and agrees to 4a through 4i above.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall execute and record a deed restriction in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition for the purpose of protecting habitat, scenic, and rural north coast character values. The Habitat, Scenic, and Rural North Coast Character Deed Restriction (Deed Restriction) shall affect the entire parcel (Deed Restricted Area) and shall include a legal description and site plan of: (1) the Permittee's entire parcel; (2) the area of site disturbance (specified in Special Condition 1); (3) the area of the parcel outside of the area of site disturbance specified in Special Condition 1; (4) the residential compound footprint (specified in Special Condition 1); and (5) the wetland and riparian area (as mapped in Exhibit P-22). The Deed Restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. The Deed Restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

- 5. Agricultural Hold Harmless and Indemnity Agreement.** By acceptance of this permit, the Permittee acknowledges and agrees: (a) that the site is adjacent to land utilized for agricultural purposes; (b) users of the property may be subject to inconvenience, discomfort or adverse effects arising from adjacent agricultural operations including, but not limited to, dust, smoke, noise, odors, fumes, grazing, insects, application of chemical herbicides, insecticides, and fertilizers, and operation of machinery; (c) users of the property accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses; (d) to assume the risks to the Permittee and the property that is the subject of this permit of inconveniences and/or discomforts from such agricultural use in connection with this permitted development; and (e) to indemnify and hold harmless the owners, lessees, and agricultural operators of adjacent agricultural properties against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any issues that are related to the normal and necessary agricultural land use and its impact to users of the property.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition and all required notification requirements of

current Santa Cruz County Code Section 16.50.090 (Agricultural Land Preservation and Protection, Public Notification Requirements; see Exhibit F). The deed restriction shall include a legal description of the Permittee's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

6. **Other Agency Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval evidence of all permits, permissions or approvals granted, or evidence that no permits, permissions or approvals are necessary, from: (1) United States Fish and Wildlife Service; (2) California Department of Fish and Game; and (3) California Department of Forestry. The Permittee shall inform the Executive Director of any changes to the project required by the any of the above-listed agencies. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is necessary.
7. **Santa Cruz County Conditions.** All previous conditions of approval imposed on the project by the Santa Cruz County pursuant to an authority other than the California Coastal Act remain in effect (Santa Cruz County Application Number 98-0426; see Exhibit C). To the extent such Santa Cruz County conditions conflict with the Coastal Commission's conditions for Coastal Development Permit Number A-3-SCO-00-033, such conflicts shall be resolved in favor of the conditions for Coastal Development Permit Number A-3-SCO-00-033.

### III. Findings and Declarations

The Commission finds and declares as follows:

#### Amendment Description and Analysis

The Commission approved CDP A-3-SCO-00-033 (Hinman & Skees) on December 14, 2000. The Applicants filed a petition for writ of mandate and complaint for damages against the Commission in 2001, challenging several of the Commission's conditions of approval (*Hinman v. California Coastal Commission*, San Francisco San Francisco Superior Court Case Number 318867). On August 20, 2002, the court granted the petition for writ of mandate. The Court held that the Commission did not have substantial evidence to support special conditions that limit the development's site disturbance area to ¼ acre of the approximately 50 acre site (original Special Condition 1(a)) and that reduce the height of the residence so that it is not visible from public viewing areas within Año Nuevo Reserve and Highway One (original Special Condition 1(d)), along with special conditions for protection of endangered and threatened species (i.e., original Special Condition 3 requiring a habitat enhancement and management plan over the property outside of the ¼ acre site disturbance area in order to protect listed and sensitive plant and animal species (including native Monterey pine forest, California red-legged frog, and San Francisco garter snake) and original Special Condition 4 requiring a habitat conservation easement over

the property outside of the ¼ acre site disturbance area). In particular, the court stated:

*The findings upon which the Coastal Commission based its imposition of the ¼ acre condition, the special conditions for endangered and threatened species, and the height reduction condition on petitioner's proposed project area not supported by substantial evidence in the record.*

A trial on the complaint for damages is currently scheduled for November 2003.

Following the court's granting of the writ of mandate,<sup>2</sup> the parties entered into settlement negotiations. The settlement negotiations resulted in a settlement agreement designed to propose modifications to the permit conditions in order to resolve the litigation against the Commission. This amendment request is designed to implement the settlement by revising the original permit conditions consistent with the settlement agreement.

The most significant changes between the Commission's originally approved conditions and the replacement conditions proposed by this amendment are: to increase the size of approved development envelope from ¼ acre to 2 acres (Special Condition 1(a)); to eliminate the requirement for a bridge over the riparian corridor near the pond in favor of modifications (designed to enhance habitat protection) to the existing roadway (Special Condition 1(h)); to replace the non-development envelope habitat enhancement and management plan (that covered +-50 acres) with a pond-only enhancement plan (Special Condition 3); to eliminate the habitat conservation easement covering the habitat enhancement and management plan area (original Special Condition 4); and to limit maximum structure height to 35 feet as opposed to the original requirement that the height be reduced as much as necessary, and at least 10 feet (from the proposed 51 foot height) so that it is not visible from public viewing areas (Special Condition 1(d)). Additional changes of note include allowing for a smaller overall development and a different architectural style (revised Special Condition 1(n)); and increased specificity regarding habitat protection measures to be implemented during construction (revised Special Condition 2).<sup>3</sup> The Commission finds that the amended conditions provide better protection of resources as contemplated by the LCP than simply striking those conditions that the court determined were not supported by substantial evidence. For example, although the court struck the condition limiting the height of the proposed residence (proposed at 51 feet), the amended conditions provide that the height shall be limited to no more than 35 feet from original grade. Similarly, although the bridge requirement has been omitted, improvements will be incorporated into the road near the pond to allow habitat corridors for both San Francisco garter snake and California red-legged frog. Detailed construction requirements designed to protect listed species are also provided. Also, although the court struck the habitat easement condition, the replacement conditions protect habitat by prohibiting development outside of the approved development envelope and requiring that such prohibition be included in a deed restriction. Further, although the court struck the habitat management plan condition, the conditions require a habitat enhancement plan for the pond, which will provide some enhancement of red-legged frog

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<sup>2</sup> Note that the court did not issue a statement of decision in granting the writ. Rather, the court indicated that the petitioner would prepare the court's statement of decision. Because the parties subsequently entered into settlement negotiations, the statement has been put on hold. As a result, there is not currently a statement of decision in this case.

<sup>3</sup> The differences between the original conditions of approval and the proposed amendment changes are shown in cross-through and underline format in Attachment 2; the revised conditions of approval are shown in Section II above.

habitat.

Within the context of the litigation, including the judicial determination concerning the Commission's original approval in this specific case, the amended conditions continue to address Commission concerns and the requirements of the LCP related to ESHA, visual and north coast character resources, agricultural protection, and water quality. The Commission's originally adopted findings for approval of the permit, which set forth a discussion of LCP requirements and analysis of issues, are incorporated herein, as amended by these findings (see Attachment 1 for the previously adopted findings).

California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The above findings discuss the relevant coastal resource issues with the proposal, and require appropriate conditions to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

As such, consistent with the court ruling on the petition for writ of mandate there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as modified, would have on the environment within the meaning of CEQA.